Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Alberta A. Swan - Petitioner

v.

Wal-Mart - Respondent

On Petition For Writ Of Certiorari To The Supreme Court of Pennsylvania

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PETITION FOR WRIT OF CERTIORARI

Alberta A. Swan (Pro Se)
177 Eastbrook Road
Smoketown, PA 17576
717-239-0425

QUESTIONS PRESENTED

1. Did the Supreme Court of Pennsylvania address the Claimant's mental injuries before rendering a decision?

2. Did the Claimant provide medical documentation to prove that she became disabled as a result of the incident that occurred on September 18, 2001 (Americans with Disabilities Act 1990)?

3. Was the Claimant working under normal (standard) working conditions during the time of the incident that occurred on September 18, 2001?

LIST OF PARTIES

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The Honorable Judge Robert Benischeck
Workers' Compensation Judge
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appear at Appendix A (Order of the Supreme Court of Pennsylvania, June 6, 2006) and Appendix B (Order of the Supreme Court of Pennsylvania, May 1, 2006) to the petition and is unpublished.

The Opinion of the Workers' Compensation Appeal Board (January 26, 2005) appears at Appendix C to the petition and is unpublished.

The Decision of the Workers' Compensation Judge (January 23, 2004) appears at Appendix D to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was June 6, 2006. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

I was a Wal-Mart employee who worked in the Cash Room of Wal-Mart store # 2334 located in Lancaster, Pennsylvania. I was hired to protect Wal-Mart's assets. On September 18, 2001, I was assaulted by a Wal-Mart employee who relentlessly tried to force his way into the Cash Room - no employees are allowed into the Cash Room unless accompanied by management. As a result of being assaulted by the Wal-Mart employee, I am now totally disabled.

I provided medical documentation by licensed physicians to prove my disability (Americans with Disabilities Act of 1990). However, I was denied Workers' Compensation rights by Wal-Mart and also by the Workers' Compensation Appeal Board. The Supreme Court of Pennsylvania denied my Application for Reconsideration of this matter. Therefore, I respectfully pray that a writ of certiorari be granted for this petition.

REASONS FOR GRANTING THE PETITION

September 18, 2001, I was in the course and scope of my employment at Wal-Mart in Lancaster, PA (store # 2334). My job title was an Accounting Clerk. My job responsibilities were to take the cash bags from the Accounting Room into the Cash Room. I then would separate the bottle caps, credit card receipts, coupons, telephone card receipts and other paper receipts from the cash. Next, I would then count the cash and place a new amount of cash in the bags for the cashiers' registers for the next day. I would then enter the amount of receipts for the evening in the computer and prepare the bank deposit slips. I was normally alone while performing my job duties.

On September 18, 2001 between the hours of 2:00 am and 3:00 am, I was alone in the Cash Room in the course and scope of my employment at Wal-Mart when I heard a loud knock on the Accounting Room door. The Accounting Room door was a steel door that had two locks, one was a deadbolt and the other was a door lock. The deadbolt lock was very loose. In fact, I had informed my Assistant Manager (Kevin) and my acting Supervisor (Wendy) that this lock was loose. I had informed them about the loose lock at least five or more times prior to the incident. They would tell me that the lock was OK and did not seem concerned about changing the lock. I would complain to my Management, because I felt very unsafe working alone with large amounts of cash in a room that was not completely secured.

When I heard the loud knock on the Accounting Room door, I went to the intercom inside the Accounting Room and asked the person if I could help them. There was a man at the door demanding that I open the door. I told him that he was not allowed or authorized to come inside this room; only Management and employees accompanied by Management were allowed into the Accounting Room – there were no exceptions to this rule. However, he kept demanding that I open the door. I then looked up into the

video monitor and I saw a man with a baseball cap. He then went to the door and started slamming his body up against the door, demanding that I let him in. This man was not an employee who should have been allowed inside the cash room.

I then got on the store intercom and called for my Assistant Manager, Kevin, to come to the Cash Room. When Kevin did not respond, I got on the intercom and called for him again. Since he did not respond the first or second time I called for him, I then got on the intercom and called my husband, Roy, to come to the Cash Room. My husband was working in Produce at the time of the incident. He called me immediately on the telephone and asked if I was OK. I told him that someone was trying to break into the Cash Room. We hung up and I called 911. The 911 Operator asked me what was going on and I told her where I worked, my name and that someone was trying to break into the Cash Room. She then put a gentleman on the phone to speak with me, and while I was talking to him, I went back into the Cash Room and locked the door. Within seconds, my husband came to the Customer Service area, near the Accounting Room door. The man left from the door and confronted my husband. I heard him tell my husband to get away and to go back to work. My husband then asked him if he knew if I was all right and was he the one bothering me. Within a few seconds after the commotion started, I then heard a key being put inside the lock of the Accounting Room door and my Assistant Manager asking me if I was all right. I told him that I was all right, meaning that I was glad he was there and that the incident was over. My Assistant Manager asked me several times if I was OK and he allowed my husband to come in to the Accounting Room. I then asked my Assistant Manager where he was when I called him and that he should have fixed the lock on the door months ago when I had informed him and my acting Supervisor that the lock was loose. He responded by saying that I never should have called the police.

I then spoke to the police woman to finish filling out the police report and I then went back to work, even though I was quite upset and frightened by the whole incident. My acting Supervisor (Wendy) came in later that morning. I told her what happened and then I went home.

I went home and I could not go to sleep. I felt nervous, scared, nauseous, tense, tightness in my chest and had a severe headache. I took my blood pressure and it was 200/115. Before the incident, my blood pressure was 140/80. Due to being so upset from the incident and seeing my blood pressure readings, I immediately called my doctor, Dr. Farrell Crouse, and he told me to come to him right away. When I went to his office, I told him about what happened that morning and he told me that I was suffering from extreme anxiety, which was causing my blood pressure to be extremely high. He told me I was suffering from post-traumatic panic attacks as a result of the incident. He put me on Wellbutrin for my anxiety and recommended that I should not go to work. He wrote me a disability note excusing me from work. I then went home, took my anxiety medicine and went to sleep.

Over the next few weeks, I was so depressed and nervous from the incident that I would only get out of bed to go to the bathroom and then I would go back to bed. I was taking double the dosage of my anxiety medicine. Due to my blood pressure still being extremely high after the incident, my anxiety increased even more, because all I could think about was that I was going to have a stroke. This increased anxiety caused me to start having anxiety attacks 3 to 4 times a day, whenever I would be awake. I then went to see my doctor, Dr. Allen Auerbach, for my blood pressure. After checking my blood pressure, he also tested my blood sugar. My blood sugar was over 300. Before the incident, my blood sugar was approximately 106. The last time I had to take a prescribed medicine to control my blood sugar was in the 1980's. However, after the incident, Dr. Allen

Auerbach had to put me back on prescribed medicine to try to lower my blood sugar. At this point in time, my blood sugar is still not controlled. As I stated earlier in this petition, Dr. Farrell Crouse had to put me on Wellbutrin for post-traumatic panic attacks. Even with the Wellbutrin, the post-traumatic panic attacks still continue. As a result of the incident, my health has drastically deteriorated.

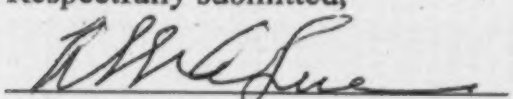
I applied for Workers' Compensation, but my request was unlawfully denied. According to Workers' Compensation laws, workers who are injured in the course of their employment are entitled to Workers' Compensation. There are four types of injuries which Workers' Compensation may cover: traumatic physical injuries, repeated trauma injury, mental injuries, and occupational disease. According to Workers' Compensation laws, the aggravation of a pre-existing condition, such as a physical or emotional condition which was not caused by work, is a covered injury under the Workers' Compensation Act; that is, if performing one's job aggravates a pre-existing medical condition, the aggravation of that condition by performing work duties constitutes a covered injury. The Americans with Disabilities Act prohibits discrimination against individuals with disabilities, defined as a physical or mental impairment that substantially limits one or more major life activities. By law, individuals suffering from these disorders which includes post traumatic anxiety attacks, are protected from discrimination in employment, with the EEOC required to protect these individuals (if the EEOC rules against a company, penalties and subsequent judgments may be awarded in court). However, I was denied my rights to Workers' Compensation even though I provided documentation to prove that I am disabled as a result of the September 18, 2001 incident. By law, when the injured is unable to work because of an injury or illness which was caused by his employment, he or she is entitled to disability compensation payments. Payments for permanent disability

are over and above the cost of medical care. Not only have I been unlawfully denied my rights to Workers' Compensation, but I have also not been reimbursed for medical expenses. Before the September 18, 2001 incident, I did not depend on walking canes, a walker, or a motorized wheelchair to get around. Before September 18, 2001, I was not having post-traumatic attacks. As a result of the incident on September 18, 2001, I have to depend on walking canes, a walker, and a motorized wheelchair to get around. As a result of the incident on September 18, 2001, I have post-traumatic attacks. As a result of the incident on September 18, 2001, I am totally disabled.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Alberta A. Swan

Date: 8/16/06